

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEBRASKA**

**UNITED STATES OF AMERICA,**

**Plaintiff,**

**vs.**

**DAVID BURGESS,**

**Defendant.**

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**CASE NO. 8:13CR253**

**MEMORANDUM  
AND ORDER**

This matter is before the Court on the Defendant's letter, construed as a Motion Under 28 U.S.C. § 2255 (Filing No. 64). The letter references the Supreme Court decision, *Johnson v. United States*, 135 S. Ct. 2551 (2015), and the Defendant appears to seek a reduction in his sentence based on that decision. The Court has reviewed the filings in this case and notes that the Defendant was sentenced for a controlled substance offense, and as a career offender. He appears to argue that the *Johnson* decision would alter his career offender status if applied to the underlying offenses. Also before the Court is a Motion to Withdraw (Filing No. 70) filed by the Federal Public Defender. In the motion, the Federal Public Defender states he has reviewed the Defendant's prior convictions and has determined that there is no merit to a claim that the Defendant's sentence could be affected by *Johnson*. The Court agrees.

Accordingly,

IT IS ORDERED:

1. The Defendant's Motion Under 28 U.S.C. § 2255 (Filing No. 64) is denied;
2. The Motion to Withdraw (Filing No. 70) filed by the Federal Public Defender is granted; and

3. The Clerk of Court is ordered to mail a copy of this order to the Defendant at his last known address.

DATED this 1<sup>st</sup> day of March, 2016.

BY THE COURT:

s/Laurie Smith Camp  
Chief United States District Judge